

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF OKLAHOMA**

VALERIA K. WATKINS, an
individual and VALERIE KAY
WATKINS as parent and next friend
of JONATHAN PORTER, a minor
child,

Plaintiffs,

v.

RHEN RICHARD, an individual, and
L&L MOTOR COMPANY, INC., a
foreign corporation,

Defendants.

Case No. 20-CV-438-SPS

**In the District Court of McIntosh County,
State of Oklahoma,
Case No. CJ-20-85**

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant, Rhen Richard, (the “Removing Defendant”) removes this action from the District Court of McIntosh County, Oklahoma, to the United States District Court for the Eastern District of Oklahoma. Removal is warranted as this is a diversity action with more than \$75,000 in controversy, and thus, this Court has subject matter jurisdiction over this matter under 28 U.S.C. § 1332. In support of this Notice of Removal, Removing Defendant shows the Court as follows:

BACKGROUND

1. On or about October 22, 2020, Plaintiff Valerie K. Watkins commenced this action in the District Court of McIntosh County, State of Oklahoma, by filing a Petition. [See Ex.1, Pl.’s Pet].

2. Pursuant to 28 U.S.C. § 1446, a true and correct copy of the summons, docket sheet, and all copies of process and pleadings from the state court are attached as Exhibits 1 - 9.

3. Plaintiff served Removing Defendant with the Summons and Petition on October 30, 2020, thereby giving him notice of the State Court Action.

4. Pursuant to 28 U.S.C. §§ 1332 and 1367, and as discussed more fully below, there is complete diversity between Plaintiff and Defendants, and the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

5. Pursuant to 28 U.S.C. § 1446, defendants “who have been properly joined and served must join in or consent to the removal of the action.” See 28 U.S.C. § 1446(b)(2)(A) (emphasis added). Defendant, L&L Motor Company, Inc., has no objection to this removal.

6. Pursuant to 28 U.S.C. § 1446(a), the United States District Court for the Eastern District of Oklahoma is the appropriate court for filing this Notice of Removal from the District Court of McIntosh County, Oklahoma, where the action was pending. *See* 28 U.S.C. § 116(c).

7. The Notice of Removal is timely filed. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is filed within thirty (30) days of receipt by the Removing Defendant of the initial pleading setting forth the claim for relief upon which such action or proceeding is based.

8. Venue is proper under 28 U.S.C. §§ 1441(a) and 1391(b).

**REMOVAL IS PROPER BECAUSE THIS COURT HAS SUBJECT MATTER
JURISDICTION UNDER 28 U.S.C. § 1332**

9. This Court has original jurisdiction over this action under the diversity of citizenship provision contained in 28 U.S.C. § 1332(a) because this is a civil action (A) where the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and (B) that is between citizens of different states. Accordingly, the action may be removed to this Court by the Removing Defendant pursuant to 28 U.S.C. § 1441(a).

A. The amount in controversy requirement is satisfied.

10. It is apparent from the face of the Petition that Plaintiff seeks recovery of an amount in excess of \$75,000, exclusive of interest and costs. [See Ex. 1, Pet. at p. 3].

11. The assertions regarding damages in the Petition are sufficient to demonstrate that the amount in controversy requirement for diversity jurisdiction has been met. See 28 U.S.C. § 1446(c)(2).

B. Complete diversity of citizenship exists between Plaintiff and Defendants.

12. Upon information and belief, Plaintiff is a citizen of and domiciled in the State of Oklahoma. [See Ex. 1, at p. 1].

13. Defendant Rhen Richard is a citizen of and domiciled in the State of Utah.

14. Defendant L&L Motor Company, Inc., is a foreign corporation with its principal place of business in Roosevelt, Utah.

15. In light of the foregoing, complete diversity exists for purposes of 28 U.S.C. § 1332(a)(1).

THE REMOVAL PREREQUISITES HAVE BEEN SATISFIED

16. Based upon Plaintiff's allegations, diversity jurisdiction has been satisfied under 28 U.S.C. § 1332(a)(2).

17. Based upon Plaintiff's allegations, the amount in controversy in this action, exclusive of interest and costs, exceeds \$75,000.00, the requisite amount in controversy for purposes of diversity jurisdiction under 28 U.S.C. § 1332(a)(2).

18. The prerequisites for removal under 28 U.S.C. § 1441 have been met.

19. Defendant L&L Motor Company, Inc. has no objection to this removal.

20. The allegations in this Notice of Removal are true and correct and within the jurisdiction of this Court, therefore this case is removable to this Court.

21. If any question arises as to the propriety of the removal of this action, the Removing Defendant respectfully requests the opportunity to present a brief and oral argument in support of the position that this case is removable.

NON-WAIVER OF DEFENSES

22. The Removing Defendant reserves all defenses, including, without limitation, those set forth in Fed. R. Civ. P. 12(b). The Removing Defendant will file a responsive pleading in the time frame permitted under Fed. R. Civ. 81(c)(2)(C), or as further extended by the Court.

23. By removing this action from the District Court of McIntosh County, Oklahoma, the Removing Defendant does not admit any of the allegations in Plaintiff's Petition.

24. Written notice of the filing of this Notice of Removal will be provided to Plaintiff, Defendant, and the state court promptly after the filing of the Notice of Removal pursuant to 28 U.S.C. § 1446(d).

25. The Removing Defendant reserves the right to amend or supplement this Notice of Removal.

WHEREFORE, Rhen Richard, desiring to remove this case to the United States District Court for the Eastern District of Oklahoma, it being the district for the county in which the State Court Action is pending, prays that the filing of this Notice of Removal shall effect the removal to this Court.

Respectfully submitted,

s/ Timothy L. Spencer

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Attorneys for Defendant Rhen Richard

CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2020, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to all registrants.

s/ Timothy L. Spencer

I also hereby certify that on November 30 2020, I served the same document by:

☒ U.S. Postal Service ☐ In-Person Delivery ☐ Courier Service ☐ Email

on the following, who are not registered participants of the ECF System:

Name(s) and Address(es):

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s/ Timothy L. Spencer

Timothy L. Spencer